ENVIRONMENTAL GOVERNANCE and the Private Sector – ENV 5223  
(Class satisfies the ABA experiential Course requirement)  
(Class satisfies the MELP Environmental Economics core requirement)

2 hrs.  
July 11-4; July 18-21 (1-4PM)  
Visiting Professor Victor B. Flatt (University of Houston Law Center) (he, him, his)

Office Hours: by appointment (Room TBD or by Zoom)

Professor Victor Flatt, 713-922-0392, vflatt@vermontlaw.edu; vflatt@central.uh.edu

Textbook: None – materials will be posted on TWEN; I do suggest that printing out the materials for classroom discussion may be helpful. A couple of parts of the course will be asynchronous (to watch on your own) in place of some parts of class meetings.

I WILL ALSO BE FORWARDING MORE recent short news articles about the topics that we will be covering. You should read these as well.

This class first examines the economic underpinnings for environmental law and for the power of markets, including moral questions about markets and private governance.

It then examines the push for more private sector accountability and governance in environmental matters (such as ESG (“Environment, Social and Governance”) and CSR (“Corporate Social Responsibility”) policies) and how this relates to legal requirements in the private sector, particularly laws governing financial and risk disclosure.

The class also looks at private sector environmental governance. In particular, the class will examine the concept of business sustainability drivers and practice, private environmental governance, and what legal standards apply.

Students will examine 1) the economic and theoretical bases for environmental laws; 2) emerging corporate and private sector behavior in response to these laws, financial disclosure laws, and public opinion; and 3) private environmental governance.

Students will prepare

1) a short “in house” email memo (less than 2000 words) addressing a specific issue related to a publicly traded company and investor guidance and decisions [i.e. are the
company’s environment/climate/social policy consistent with large investor concerns?], and

2) undertake a practical exercise in drafting either a) a corporate financial disclosure statement relating to environmental or climate risks, b) a corporate sustainability plan, c) a “comment” to be filed for the SEC call for comments on climate risk disclosure OR ISSB comprehensive reporting standards, or d) a private environmental governance agreement (contract). **MOST IMPORTANTLY, all assignments will include explanations of parts/sections.**

Students may consult with each other on practical document drafting ideas but need to do their own work

**There are no course pre-requisites**

**Grading and Curve**

Grades will be based on both the in house email memo (40%) (due Monday, July 18 at beginning of class) and the draft and explanation of one of the above practical document drafting exercise (60%) (due on Sunday, July 24, by 5:00 P.M. E.D.T. by email to vflatt@central.uh.edu). ATTENDANCE and participation is expected. Grades may be adjusted up or down for exceptional participation or inadequate attendance or participation.

From VLS Faculty manual:
**VLS has a recommended average grade of B in required courses, sectioned courses, and courses with an enrollment over 40.**

**Modifications to the Syllabus**

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

**July 11**

“How do we do good by the environment and make money?”

I. Introduction to environmental information demand. Introduction to property, environmental law, environmental externalities, market based solutions and objections

Assignments:

Garrett Hardin, Tragedy of the Commons (excerpt)
Carol Rose, Rethinking Environmental Controls . . (Flatt edit)


Adam Sulkowski, Beyond Sustainability Reporting, 10 Univ. of St. Thomas L. J. 1060 (2013) [excerpt];

Virginia Ho article, Modernizing ESG Disclosure (2022 Ill Law Rev), Part 1

Greenfin – The coming ESG Explosion

Rise of ESG Law Firms

(all on TWEN)

DISCUSSION OF CLASS, ASSIGNMENTS, AND GRADING

**July 12**

II. Using the Private Sector and Private Economic Behavior- Are Markets Moral?

III. Commodity Trading Primer

IV. Problems with Environmental Markets (standardizing the commodity; irreversible loss)


Victor B. Flatt, *Chapter on Environmental Markets*


(all on TWEN)

**July 13**

V. The Demand for Corporate Disclosure

VI. The Elements of a Corporate Sustainability Plan and ESG

Measuring Intangibles SAM’ CORPORATE SUSTAINABILITY ASSESSMENT METHODOLOGY (CANVAS):

EP Next Generation Governance – Developing Position Statements Sustainability Plan

Assignment – **Have a printed or at least PDF of a Fortune 500 Corporate Sustainability Plan (your choice)**;

please review Sustainability Accounting Standards Board (SASB – Part of Values Reporting Foundation) web presence (seek to understand how organization works (SASB – Bloomberg; ISSB; online materials; using your own search methods));

IN CLASS EXERCISE – Developing ESG Programs/Sustainability Reports

**More in depth DISCUSSION OF FIRST ASSIGNMENT**

**July 14** will be asynchronous for you to watch on your own and post questions

Watch first 2 hours, 20 minutes of Sustainability Accounting Board March 2, 2022 meeting recording (about 15 minutes in middle is a break)–

[SASB Standards Board Meeting - March 2, 2022 - YouTube](https://www.youtube.com/watch?v=)

**ASSIGNMENT:**

*Prepare 2 written questions about the presentation, and email to me by 11:00 AM on March 26, to vflatt@central.uh.edu*

**July 18**

VII. **The Sustainability Ratings AGENCIES**

Discuss SASB Materiality at [http://materiality.sasb.org](http://materiality.sasb.org)
VIII. Financial Disclosure Requirements Related to the Environment (Practice and Critique)

Assignment –


Virginia Ho article, part 2

Big E Book of Sustainability Reporting Framework

(all on TWEN)

FIRST ASSIGNMENT DUE at beginning of class

**July 19**

**In depth DISCUSSION OF SECOND ASSIGNMENT**

Financial Disclosure Cont…/An attorney’s rule and attorney ethics

Assignments:

Go online and find and download the official Securities and Exchange Commission (SEC) Reporting – Form 10-K

*SEC Sends Companies a Climate Wake Up Call* article

Virginia Ho article, Part 3


In class look at SEC Proposed Climate Financial Disclosure Rule; ISSB proposed Disclosure Rule

(all on TWEN)

**July 20**  (SPECIAL TIME 2:00 to 3:30 – remainder of class is asynchronous)

Asynchronous portion, please view video of Flatt, et al. shareholder litigation and greenhouse gas issues BEFORE CLASS
IX. Additional Legal Liability Potential with ESG and Sustainability

Financial Disclosure Discussion Continued
Shareholder Materiality and Litigation

Assignment:

Please email 2 questions about the asynchronous presentation before class 2 PM to (vflatt@central.uh.edu)

Latham and Watkins – ESG Litigation Roadmap (TWEN)

July 21

The Private Sector as Primary Environmental Regulatory Body (Absence of Government Policy and Power of Investment and Consumers)
Also conflicting government policy

Assignment:


BlackRock 2021 Letter to CEOs at Larry Fink CEO Letter | BlackRock


Locke Lord Quick Study: Insurers Hit with Two Climate Disclosure Developments on Same Day

SECOND ASSIGNMENT due on Sunday, July 24, by 5:00 P.M. E.D.T. by email to vflatt@central.uh.edu)